

## **Guidelines for Appropriate Use of Electronic Information Sources**

Electronic access to information, particularly through the Internet, is a complex area for public library administrators and board members to address because the Internet is a complex, fluid, electronic crossroads where large amounts of easily accessed information is available at minimal cost. Accordingly, policies regarding access to the Internet in the public library are also complicated. When establishing policies, library board members and administrators must keep in mind the rights of individuals to free speech and inquiry, as well as the community's interest in limiting certain types of speech in public spaces, especially areas frequented by minors. Libraries must also consider that information retrieval through the Internet has expanded to the point that, given competition for time on the limited number of PCs available for public use, priorities may have to be established regarding those uses which are most consistent with the mission of the library and those which may be beyond the scope of services the library will offer.

As a result of the complexity of issues involved in electronic access, guidelines that separate acceptable from unacceptable uses must almost inevitably be unusually detailed. Detailed guidelines will assist staff members in a meaningful way as they attempt to enforce policies established by the Board in a manner which is consistent and fair across the system. This approach will allow the staff to better navigate the difficult ground between individual rights and community interests.

### **Part I: Principles for Enforcing the Policy on Electronic Access**

Staff members charged with enforcing policies can do so with more confidence, and can exercise judgment more effectively if they understand the principles upon which the policies and guidelines are based. Accordingly, the key principles that underlie Library policies and guidelines for electronic access are defined as follows:

Principle 1: The right of patrons to meet their information needs through library resources, including electronic resources, is at the heart of the Library's mission. The Library vigorously promotes the use of all of its resources, and encourages patrons to utilize its resources as fully as their needs dictate. However, the Library also recognizes that it operates in the context of other laws and community interests which suggest some limits to the rights of patrons to access or to display certain types of information. Those limits are narrowly defined and are the most minimal possible to balance the right of inquiry with the competing concerns of appropriate displays in a shared public space, and the access minors may have to sexually explicit materials.

Principle 2: While promoting the rights of adults and minors to conduct inquiries for information through electronic resources, the Library also has an obligation and right to administer the space in which the inquiry is conducted. The public character of the space is further and more specifically defined as a space which is frequented by minors. Consequently, the Library has an interest in managing the space in accordance with the precept that minors should not be exposed to certain types of visual representations.

Principle 3: In the case of minors, the Library has established an informal base for parents to understand the range of materials their children are likely to encounter when visiting the Library,

which is best defined by the collection itself. Consequently, the Library has an interest in limiting the access which minors may directly have to visual images which may clearly be beyond what the Library could ever reasonably acquire for the children's or young adult collections based on its materials selection policies

Principle 4: In enforcing policies in the area of electronic access, the Library wishes to adopt an approach which narrowly targets access to information that is illegal and to those materials which meet statutory definitions for visual images that may be harmful to minors and are therefore determined to be unacceptable for display in the library as a public space. In enforcing guidelines for accessing electronic information, the Library applies methods which are minimally intrusive and non-punitive, but also progressively firm and decisive. Enforcement is also based on the concept of fairly informing the patron of the behavior necessary to achieve compliance, informing the patron of the consequences of non-compliance, limiting privileges as a response to non-compliance, and defining a process for review and appeal by a patron of any enforcement action.

## **Part II: General Guidelines**

In enforcing the Library's policies related to electronic access to information, staff members should view the following guidelines as part of the Library's overall approach to working with patrons and addressing patron behavior issues. Even though electronic resources have unique characteristics and pose special issues, they are utilized by patrons within the broad context of library services. Consequently, to the extent possible, patron use of them, and staff intervention necessary to assist in their use, should be guided by practices that apply as well to other aspects of library service. Key service and patron-relation elements to remember in applying the guidelines detailed herein include the following:

1. The primary purpose of electronic access is to further enhance the ability of patrons to locate needed information, and the staff's primary obligation is to assist patrons in this endeavor. Staff members should focus their efforts on helping patrons widen the options they have for finding information even when that information is controversial, when it may be unpopular and when it may be offensive to some members of the community.
2. In enforcing Library policies, staff members should be clear they are not enforcing laws. Rather, they are enforcing library policies related to the use of electronic resources and the management of the library as a public space, drawing on state statutes and statutory definitions to help do so by basing the guidelines on clearly established rather than arbitrary or personal criteria.
3. In working with patrons using electronic resources, staff members should strive to inform and educate them about library policies and use of search strategies and techniques, and should engage in enforcement procedures only as a secondary choice as the situation requires.
4. Staff members should exercise some judgment in applying the guidelines established below. Staff should be cautious when they intervene in a patron's use of a resource, and when they do intervene they should be certain they have grounds for doing so based on policy.

5. Content-limiting software is installed on all publicly accessible Internet PCs as a complement to the Library's electronic-access policies and the guidelines established for enforcing them remain. The approach taken in utilizing content limiting software is consistent with legal guidance based on Supreme Court rulings and is consistent with State law (Utah Code annotated 9-7-215). The Library recognizes the potential difficulties and limitations of content-limiting software. Thus, while it is possible that the software will inadvertently block access to sites that fall within the scope of acceptable uses, it is also possible that a patron will circumvent the software or that the software will fail to block a site that does not meet acceptability standards. Therefore, Library policies for Internet access remain in effect whether content-limiting software is engaged or has been disabled or overridden in accordance with these guidelines. However, consistent with case law, the library staff will disable or override content-limiting software on any PC upon request by a user 18 years of age or older, with the exception of PCs in areas dedicated primarily to minors, and will do so immediately and without further investigation as to the purpose or intention of the user. Additional guidelines for this procedure are provided in Part IX, below.

### **Part III: Display of Information That May Be Harmful to Minors**

1. Patrons may not display in the library images or visual depictions that meet the following definitions, as established in Utah State Code 76-10-1201 and specified therein as categories of representation that may be harmful to minors:

“Sexual conduct” means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

“Sexual excitement” means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

“Sado-masochistic abuse” means: (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or (b) the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

“Nudity” means: (a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering; (b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or (c) the depiction of covered male genitals in a discernibly turgid state.

A narrowly-defined exception to the display of images or visual depictions of “nudity,” as defined above, is made based on the statutory-defined intent to exclude from the “harmful to minors” category information that has “serious literary, artistic, political or scientific value for minors.” Additional guidance on this narrowly-defined exception is provided in Parts IV and V, below.

It is hoped that by focusing on these definitions, staff will avoid being arbitrary and capricious, or over-reaching the library's purpose of limiting the display of certain types of information in a public space.

2. If a patron displays visual depictions which meet the statutory definitions contained in (1), above, he or she will be informed that library policies prohibit the display of such visual depictions, and a request will be made that the patron exit the site and avoid entering similar sites.

It should be acknowledged from the outset that interventions of this nature are uncomfortable for both the patron and the staff member. It is not easy to intervene in any situation involving patron behavior, including those involving the nature or content of a search. However, when it is necessary to intervene, the staff member should be careful and discrete, and verbal discussion of the situation in the public area, both between staff members and between staff members and the patron involved, should be as limited as possible.

A. If the situation permits, it is best that two staff members observe the situation in case future documentation is required.

B. A staff member will approach the patron and indicate something to this effect: "Sir/madam, I have to ask you to exit the site you are in immediately and to review this information." The staff member will then provide the patron with a printed statement which reads as follows:

"As the library is a public space frequented by minors as well as adults, display of visual representations which may be harmful to minors, as defined in state statute, is prohibited. A copy of the Library's policy and additional information is available upon request. If you have questions regarding this policy or its enforcement in this case, please contact the Branch Manager or Library Director at 801-451-3030.

C. It is hoped that the patron will-comply with the staff member's request. Following the incident, the staff member(s) will make a note describing the patron, the nature of the material seen, and any other pertinent information, such as additional conversation with the patron, which may be needed as supporting documentation for further enforcement.

D. If the patron refuses to exit the site, re-enters the site, or enters a similar site, the staff member will approach the patron and indicate something to this effect: "Sir/madam, I have informed you of the Library's policies and asked you to comply with them. I will now ask you once again and for the last time to do so."

Again, it is hoped the patron will comply.

E. If the patron refuses to comply, or asks something to the effect of, "What will you do if I don't?" the staff member will indicate that the library has established procedures for these cases and will present the patron with a printed statement that reads as follows:

"If a patron fails to comply with the request of a staff member to terminate prohibited uses of the Library's PCs, or with other instructions from the staff regarding appropriate use of the PC's, or to leave the PCs following repeated violations, the staff is instructed to contact local law enforcement officials who will determine what course of action to follow. The matter will also be referred to the Library Director who will determine, in consultation with the Davis County Attorney's Office, whether to suspend the patron's Internet privileges and whether to pursue additional legal actions."

If the patron still refuses to comply, staff members should contact local law enforcement officers, indicate that a possible public nuisance situation is underway and request their immediate assistance. Upon the arrival of the police, staff should cooperate with them as fully as possible, leaving the management of the situation to them.

F. In these extreme cases, staff members should if possible make note of the website being accessed and print the screen or screens involved in the dispute for future reference. Staff members should also contact the Director or a designated library administrator immediately.

G. It should be noted that this approach would also be taken if an individual in some highly unusual case was displaying hard-copy materials, e.g., such as in a magazine, in the library and the staff had to intervene. It should be noted that the relevant public decency law which we would consider applying may be found in Utah Code 76-10-803, specifically subsection (b), which includes “offends public decency” in the definition of public nuisance.

H. Patrons who have been required to exit a site for any reason may appeal the action of the staff to the Library Director who will determine whether or not the site meets the Library’s policies for acceptable use. If the Director determines that site falls within the scope of acceptable use, he or she will discuss with the staff involved the basis for the initial action and inform them of the reasons for the reversal. If the Director determines that the site falls outside the scope of acceptable use, the patron will be so informed in writing. Appeals to the Director may be made immediately, and up to five (5) days after the action of the staff, and may be made verbally or in writing. The Director will respond within three (3) business days of receipt of the appeal. If the patron is not satisfied with the decision of the Director, an appeal may be made to the Library Board of Directors at its next regularly-scheduled business meeting, at which time the Board will act. The appeal to the Board of Directors must be made in writing.

I. Patrons may appeal any aspect of Library policies to the Board of Directors.

#### **Part IV: Minors**

As indicated in Principle 3, above, the Library views its relationship to minors in a somewhat different light than that it has with adults in terms of Internet use. Because of its nature, the Internet opens to a minor user a world of information far beyond what most public libraries own in terms of both scope and content. Consequently, the Internet allows public libraries to provide all users with vastly more information than ever before; it can serve as the link to information which communities and states have deemed as potentially harmful for minors.

While the library cannot assume the responsibility of enforcing laws related to materials potentially harmful to minors, it can establish policies which attempt to limit the opportunities for minors to access or be exposed to materials beyond the reasonable boundaries of what may be considered appropriate for minors. In applying this concept, the Davis County Library relies not only on definitions contained in state laws, but also on the notion that its collection development policies establish broad boundaries of appropriateness which in turn create an expectation of what images and visual representations parents may anticipate their children will encounter at the library in those collections developed for children and young adults. Consequently, content limitations for minors are somewhat more stringent than those for adults, and the basis established for staff members to intervene is accordingly broader.

1. Staff members may intervene in the use of the Internet by a minor when the minor is accessing materials which are sexually explicit, in accordance with criteria stated in Part III or which may be harmful to minors based on criteria established in Utah Code Annotated 76-10-1201, which reads in part as follows:

“Harmful to minors” means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

- (i) taken as a whole, appeals to the prurient interest in sex of minors;
- (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (iii) taken as a whole, does not have serious value for minors.

In terms of actual enforcement of policy, most cases that are addressed by the definition of obscenity would already be prohibited for access by minors based on the “harmful to minors” definitions presented in Part III. In the unusual case in which this does occur, staff members should make a good-faith effort to apply the above criteria, preferably in consultation with a second staff member if the situation permits. In applying these criteria, it is again important to recall that the staff is not enforcing the law but is using criteria established by statute for guidance in managing public access to information in a public space.

All criteria established for adult use of the Internet apply to use by minors.

2. Staff members may intervene in the use of the Internet by a minor when the minor is accessing materials which include nudity, as indicated above and as defined in Utah Code 76-10-1201, when such nudity does not meet the statutory intent of permitting access to information that has “serious literary, artistic, political or scientific value for minors.” In determining whether the information being accessed may have serious value for minors, staff members should consider whether or not the type of information being accessed resembles information that could be available to minors in either the children’s or young adult collections of the library based on the library’s materials selection policy. This concept is elaborated in Principle 3, above. Staff members may also intervene in the use of the Internet by a minor when the minor is accessing materials which include graphic representations of gross bodily functions or graphic representations of extraordinary violence. These guidelines clearly involve some element of judgment, and staff should intervene only when they are clear regarding the particular case. If there is doubt in the staff member’s mind, a second staff member should be consulted. If doubt remains, the staff member should refrain from intervening and simply make note of the case for future reference and discussion. As with adults, staff should defer to the right of the patron to search and conduct inquiries and use intervention only when necessary to remedy a clear situation. Preference should be given to providing the individual minor with information and to helping clarify appropriate uses of the Internet.

3. If a minor accesses material which requires intervention, staff members will make a judgment about the appropriate means for intervention based on the age of the individual, the nature of the material being accessed and the opportunities the staff member senses for providing information that will deter future difficulties.

Minors may range in age from quite young to near adulthood, and methods for intervening when problems arise, including language used to explain the policy, should vary based on age. If problems persist with an individual minor either the same day or over several different visits to the library, staff should document the nature of the problem and the specific incidents, including dates and conversations. In consultation with the Branch Manager or Director, staff will map a

strategy which involves a progressive level of response which may include conversations with and verbal warnings to the individual, a letter to the individual's parents and suspension of Internet privileges for a period of time. As with adults, minors may appeal the denial of access to a particular site in accordance with the method and timeframe established in Part III, subsection H, above.

## **Part V: Nudity**

Visual images that meet the statutory definition of nudity may not be displayed in the public space unless such images may meet a statutory definition of having "serious literary, artistic, political or scientific value." Notably, this definition does not focus, for example, on whether an image is "art," or of "artistic interest," etc., but rather on "serious artistic *value*." In lieu of individuals rendering their personal subjective judgment regarding "serious value," the Library, in its effort to comply with statutory intent, relies on the judgment, commitment and purpose of other organizations with recognized competence and expertise. Consistent with this approach, staff members may determine whether or not an image may be permitted to be displayed based on the website where the image appears. For guidance to staff members in applying this policy and meeting statutory intent, bona fide museums, governmental agencies, universities, national health associations and similar organizations are considered as authoritative to validate "serious value." Accordingly, information contained on their websites, or clearly labeled as owned by them may be permitted for access and display. An example would be art images made available through the Boston Museum of Fine Arts website or labeled with "Boston Museum of Fine Art" even if the latter is made available through an alternate website.

By contrast, for purposes of applying Library policy, the presence of an image on a commercial website, such as one selling posters or art prints without attribution of museum ownership, a commercial periodical or a private gallery, or the posting of an image to a personal or public website, such as one maintained by an individual artist, are not in and of themselves considered sufficient verification of serious value to permit display of nudity as statutorily defined.

## **Part VI: Illegal Activity**

1. Staff members may intervene in the use of the Internet when they have reason to believe that information being accessed is illegal, e.g., accessing child pornography, engaging in on-line gambling, or other activities that are defined as illegal by federal or state statute. The following outline of procedure is written in terms of child pornography, but would be followed in documenting any noted illegal activity:

If the staff perceives that a patron is accessing information that involves graphic representations of children involved in sexual situations, which is the most likely scenario to arise which could involve a violation of the law, the following steps will be taken:

A. When possible, the staff member will ask a second staff to view the information in order to verify its nature.

B. The staff will immediately contact local law-enforcement authorities and inform them that a potential violation of laws has occurred related to accessing information which involves children in sexual situations.

C. Staff will note the time of the situation, and will monitor the patron until law-enforcement officials arrive.

D. Staff will make notes regarding the situation, including the basis for their decision to contact law-enforcement officials. A copy will be retained at the branch and a copy sent to the Director for review.

## **Part VII: Sexual Harassment**

1. Staff members may intervene in the use of the Internet when another staff member indicates that a patron's use of the Internet is creating a hostile work environment.

In some cases, a patron's use of the Internet could create an environment that a staff member senses to be sexually hostile. Such a situation could arise from the patron accessing a single piece of information that the staff member considers to be inappropriate. However, it is more likely that the situation would involve a patron not only accessing the information, but also attempting to bring it to the attention of the staff member. For example, a patron could access sexually explicit information that a staff member might find inappropriate but not feel that it is creating a hostile work environment. If subsequently the patron calls the staff member over to ask questions about the computer with the same information displayed, the staff member may feel differently. Staff members must be careful to distinguish in their personal feelings between the right of a patron to access information which they--the staff members--may find offensive or inappropriate, and the moment when that right to access crosses a line and contributes to a hostile work environment. It is the point at which that line is crossed--in which the behavior of the patron as much as the information being accessed becomes a problem--that the staff may intervene in the patron's use of the PC.

In such a case, the following steps should be taken:

A. The staff member who senses the hostile environment should normally not be the staff member who intervenes in the situation. Instead, the staff member should report the circumstances to the Branch Manager, to his or her supervisor, or to a reference librarian, in this order of preference. The staff member should indicate the nature of the problem and make subsequent notes about the behavior of the patron and the information involved. A copy of these notes should be retained in the branch and a copy sent to the Director for review.

B. The second staff member involved will approach the patron and indicate that concern has been expressed about his or her behavior. The staff member will indicate the specific nature of the concern and ask the patron to be aware of it in future interactions with the staff.

C. The staff member will not require the patron to exit a particular site on the Internet or to leave the library. The intervention is intended to alter a behavior that has interfered with the use of the library by another individual--in this case, a staff member attempting to carryout his or her duties.

D. This is the extent of the Library's intervention in a particular situation unless it becomes a larger behavior problem. The staff member involved may wish to be off the floor until the patron has left. In the case of a persistent problem with a single patron, the staff should consult with the Director.



## **Part VIII: Suspension of Privileges**

A patron may have his or her Internet privileges suspended temporarily if he or she persists in using the Library's PCs for purposes which are not permitted under library policies and guidelines after being provided with information on appropriate use and afforded an opportunity to comply. Patrons will be provided with information regarding compliance with Library policies in accordance with a process of education and progressive enforcement established by the Library Director. Enforcement procedures regarding an individual patron may be pursued when documentation supports continued violations whether they occur in the same session, in multiple sessions on a single day or over several days, or in one or more branches of the Library.

Prior to any suspension of privileges, the patron will receive a letter from the Director alerting him or her to the nature of the problem, requesting compliance with library policies, indicating that further actions may be taken if compliance is not forthcoming, and providing an opportunity for the patron to offer his or her perspective. Following a further violation, the patron will be notified that his or her Internet privileges have been suspended for a period of time not to exceed three (3) months, and providing the patron with a right to appeal the decision to the Director and, ultimately, to the Board of Directors.

## **Part IX. Disabling Content-Limiting Software and Overriding Blocked Sites.**

Staff members may disable content-limiting software and over-ride blocked sites in accordance with the following directions. However, the capabilities and options available for such steps vary among software packages, and the choice of software is in turn contingent upon the network configurations and operational software employed by Davis County. Although the Library tries to identify content-limiting software packages that permit flexibility in application, including the ability to disable the filter, and recognizing the software changes from release to release, it is not always possible to make this feature available to patrons and staff members. The following guidelines are adopted to address both the situation when disabling is available as an option and when it is not.

Staff members will disable content-limiting software or override the block from a particular website for a user 18 years of age or older upon request, and will do so as immediately as workflow permits. The staff member will disable the software or override a block without questioning in any manner the purpose or intent of the user in making the request. The staff member may answer any policy questions posed by the user making the request, e.g., "Does this mean I can get into pornography since the filter is turned off if I want?", but may not reiterate policy or state policy in advance of any such question. In other words, the staff member may not preemptively state that all policy restrictions remain in effect as this presupposes that the intention of the user is to violate policy.

A. Staff members are to make no record of individual requests to disable content-limiting software or override a block except as the library determines it useful to make a neutral count of how many such requests are made.

B. Staff members will not disable content-limiting software or override a block on any PC located in a specific children's service area. Such PCs will be identified by signage indicating that they are children's PCs.

C. Staff members will not disable content-limiting software or override a block on any PC for an individual under the age of 18. A parent may personally request that the filtering software be disabled or a block be overridden on a PC that he or she intends to use with his or her minor child present. Generally, it must be the parent, not the minor, who uses the PC when the filters are disabled or overridden. All aspects of these guidelines as regards use by a minor apply throughout any session, whether or not the filters are engaged or overridden, when a parent uses a PC with a minor child. Similarly, it follows that the parent may not leave the child to use the Internet unfiltered. In the words of an attorney hired by the American Library Association to provide guidance related to the Child Internet Protection Act (CIPA), “CIPA does not contemplate parental control over library filters—that is, the statute provides that filters may only be disabled by a library employee for legitimate adult use.” Regarding the case of a parent allowing his or her minor child to use the Internet after the filters have been turned off at the parent’s request, the ALA attorney writes:

“... should the parent allow his or her child to use the computer, the parent should be required to remain at the monitor during use of the (unfiltered) computer by his or her child. While allowing the child to ‘use’ the unfiltered computer even in the presence of a parent does not literally comply with the statutory mandate, should a complaint arise, it is the parent, not the librarian, who should bear the responsibility.”

While this is the attorney’s general opinion, staff members who become aware of a minor using an unfiltered Internet PC should inform the parent that library guidelines require the filter be re-engaged during use by a minor, even if the parent remains present. If the parent refuses, staff members should document the case, including having informed the parent of the guidelines; if the parent consents, staff should simply re-engage the filters.

In accordance with CIPA statute and the concepts conveyed by the ALA attorney, parents may not request or indicate in advance, by telephone or by any other means that their minor children be given access to unfiltered Internet use when they come to the library. Only an adult, on site at the time, may request that the filters be disengaged or a block on a website be overridden. Staff members may take reasonable steps to verify the age of a patron making a request to disable filtering software. These steps may include but not be limited to asking for age verification using a driver’s license or other form of government-issued identification or a Davis County Library borrower’s card.

D. Each PC, except those excluded as being in children’s areas and designated for use by children only, will include signage indicating that a content-limiting software is engaged and that it will be disabled, and blocks on sites will be overridden upon request by an adult. All requests to disengage content-limiting software will be managed as unobtrusively as possible based on the concept of the neutrality of such requests. The signage will indicate that library policies regarding appropriate use are in effect at all times.

E. Staff members will re-engage content-limiting software as soon as possible after use of the PC is completed by the patron who requested it be disabled. As some software re-engages itself after a specified period of time, the staff may be required to do no more than verify that the re-engagement has taken place.